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March 25, 2015

Mark Neary, Clerk
Supreme Court of New Jersey
P. O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Jorge Cruz**
Docket No. DRB 15-041
District Docket No. XIV-2008-0029E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board may deem warranted), filed by the Office of Attorney Ethics ("OAE") pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate discipline for respondent's violations of RPC 1.7(a)(2) (conflict of interest) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Specifically, in October 2005, respondent undertook the representation of Juan Risso in the purchase of a business known as Uncle Charlie's, the real estate in which the business was located, and a liquor license, collectively. Respondent advised Risso that, under the law, Risso's ownership of two other liquor licenses precluded his ownership of a third. Risso then explained to respondent that Risso's future son-in-law, Anthony Masi, would purchase and hold the license until Risso could sell his interest in the other two licenses.

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As part of his representation of Risso and Masi, respondent prepared the application for the transfer of the liquor license from Uncle Charlie's to Two Guys, Inc., an entity previously formed by Masi for the purpose of this transaction. Respondent did not represent Masi in the formation of Two Guys.

On October 17, 2005, Masi signed, and respondent notarized, the application for the transfer. On October 25, 2005, the application was filed with the Linden Alcoholic Beverage Control Board (ABC), along with an affidavit signed by Masi, in which he acknowledged that he would receive all funds to purchase the liquor license from Risso.

On the application, respondent checked the box marked "no" to the question of whether the applicant, a member of the applicant's immediate family, or any person with a beneficial interest in the license of the application had any interest in any other New Jersey Alcoholic Beverage License; checked the box marked "no" to the question of whether any individual, partnership, corporation, or association, other than the applicant, had an interest, directly or indirectly, in the license applied for or in the stock of any stockholder held in escrow or pledged in any way; and checked the box marked "no" to the question of whether the applicant had agreed to permit anyone not having an ownership interest in the license to receive or agreed to pay anyone (by way of rent, salary, or otherwise) all or any percentage of gross receipts or net profit or income derived from the business to be conducted under the license. Having prepared the application and the affidavit for the liquor license, respondent knew that some of the information therein was false.

Later, in August 2006, respondent prepared a lease agreement for the property in which Uncle Charlie's was located, listing Exito Corp., an entity owned by Risso, as landlord, and Two Guys, as tenant. Despite Risso's and Masi's interests being aligned, prior to August 2006, in this instance, respondent's representation of one client was materially limited by his representation of the other client. The interests of landlord and tenant are so distinct that the inherent conflict should have been obvious to respondent. If respondent believed that, notwithstanding this conflict, he was able to competently and diligently represent both parties, he was obligated to obtain their written consent to the dual representation. He did not. Therefore, his conduct in this regard violated RPC 1.7(a)(2).

Respondent's representations in the affidavit to the ABC were analogous to other attorneys' misrepresentations in real estate documents. See, e.g., In re Agrait, 171 N.J. 1 (2002) (reprimand for attorney who, despite being obligated to escrow a \$16,000 deposit shown on a RESPA, failed to verify it and collect it; in granting the mortgage, the lender relied on the attorney's representation about the deposit; the attorney also failed to disclose the existence of a second mortgage prohibited by the lender); In re Spector, 157 N.J. 530 (1999) (reprimand imposed on attorney who concealed secondary financing to the lender through the use of dual RESPA statements, "Fannie Mae" affidavits, and certifications); In re Sarsano, 153 N.J. 364 (1998) (attorney received reprimand for concealing secondary financing from the primary lender and preparing two different RESPA statements); and In re Blanch, 140 N.J. 519 (1995) (reprimand imposed on attorney who failed to disclose secondary financing to a mortgage company, contrary to its written instructions).

Here, respondent failed to disclose to the ABC that Risso, who was clearly the beneficiary of the transaction, had an interest in two other liquor licenses. For this conduct respondent deserves no less than the reprimand imposed in the above-cited cases.

The Board was aware that respondent also engaged in a conflict of interest, by drafting a lease agreement between Risso and Masi. Risso, however, had assured respondent, on several occasions, during the course of the representation, that he was the "point man", that Masi was comfortable with whatever decisions Risso made to complete the transaction, and that, ultimately, Masi wanted nothing to do with the transaction. Nothing in the record indicates that Masi informed respondent that Risso's description of their relationship was inaccurate. There is also no indication that respondent participated in the negotiation of the terms of the lease in any way. The above circumstances, coupled with respondent's quick admission of his wrongdoing, by entering into a stipulation of discipline by consent with the OAE, and his unblemished twenty-nine years at the bar, showing that his conduct was aberrational, led the Board to believe that a reprimand for the totality of his conduct was adequate discipline.

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Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated February 4, 2015;
2. Stipulation of discipline by consent, dated December 24, 2014;
3. Affidavit of consent, dated January 20, 2015;
4. Ethics history, dated March 25, 2015.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

Enclosures

EAB/lg

c: Bonnie C. Frost, Chair (w/o encl.)
Disciplinary Review Board
Charles Centinaro, Director (w/o encl.)
Office of Attorney Ethics
Maureen G. Bauman, Deputy Ethics Counsel (w/o encl.)
Office of Attorney Ethics
Raymond S. Londa, Esq., Counsel for respondent (w/o encl.)